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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,112	08/29/2003	John Underbrink	001148CON	1842
32300	7590	11/02/2005	EXAMINER	
BRIGGS AND MORGAN P.A. 2200 IDS CENTER 80 SOUTH 8TH ST MINNEAPOLIS, MN 55402			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 11/02/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/652,112
Filing Date: August 29, 2003
Appellant(s): UNDERBRINK ET AL.

MAILED

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Group 3700

Gerald E. Helget
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/12/2005 appealing from the Office action mailed 10/29/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following is the related appeal, interference, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

U.S. Patent Serial Number 10/652,111

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-3, 5, 9-14, 16 and 17.

Claims 4, 15 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6-8 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(7) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(8) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5, 9-14, 16 and 17, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Polakoff et al. (449,430).

Regarding claim 1, the Polakoff et al. reference discloses a sink (Fig. 6). The sink includes a basin (D) and a faucet assembly (Fig. 6) having a discharge neck (at H) coupled to a faucet housing (Fig. 5) that is movably support on the basin and selectively rotatable between an upright position and a folded position (Fig. 6).

Regarding claim 2, the faucet assembly also includes a flow control valve (about H').

Regarding claim 3, as schematically shown in Figure 6, the basin includes a top portion defines a plane, wherein the faucet assembly is located completely below the plane when in the folded position.

Regarding claim 5, the basin further includes a retainer (about O in Fig. 1) that releasably retains the faucet assembly in the folded position (page 2, left col., lines 40-42).

Regarding claim 9, the Polakoff et al. reference discloses a sink (Fig. 6). The sink includes a basin (D), a faucet assembly (Fig. 6) having a discharge neck (at H), a handle (the lever portion of element H'), and a faucet housing (Fig. 5) supporting the discharge neck on the basin. A mounting means (Fig. 10) that allows the faucet assembly to be pivoted through an angle of approximately 90 degrees about a horizontal axis that is defined by the mounted means (Fig. 6).

Regarding claim 10, the basin also includes a drain (about D').

Regarding claims 11 and 12, the basin further includes a retainer (about O in Fig. 1) that releasably retains the faucet assembly in the folded position (page 2, left col., lines 40-42). The retainer is a detent (the bolt and spring mechanism) which is used to hold the faucet assembly in the folded position.

Regarding claims 13 and 14, the faucet assembly also includes a flow control valve (about H'). The control valve includes a connector (the bulging portion of the valve) for receiving one end of the discharge neck as shown in Figure 6.

Regarding claim 16, the sink further includes a supply conduit (E,E').

Regarding claim 17, as schematically shown in Figure 6, the faucet assembly is pivoted between an upright position and a lower position.

(10) Response to Argument

Applicant asserts that Polakoff et al. does not teach a faucet assembly that is received within the basin (argument section, page 3, paragraph B). The examiner is respectfully traversed.

As stated in the above rejection, the Polakoff et al. reference does disclose a sink. The sink includes a basin (as schematically shown in Figures 4 and 6, element D include the entire portion of basin extending from the top portion, where L' located, to the drain outlet at the bottom) and a faucet assembly (Fig. 6) attaching to the basin and having a discharge neck (at H) coupled to a faucet housing (Fig. 5) that is movably support on the basin and selectively rotatable between an upright position and a folded position (Fig. 6 shows that the faucet assembly is received within the basin). Thus Polakoff et al. does anticipate the invention as claimed.

Applicant also asserts that the Polakoff et al. reference does not disclose a flow control valve (argument section, page 3, paragraph C), a top portion (argument section, page 3, paragraph D), a retainer (argument section, page 3, paragraph E) and so on. The examiner is respectfully traversed. Again, the Polakoff et al. reference, as stated in above detailed rejections, does disclose a flow control valve, a top portion defining a plane in which the faucet assembly is located completely below the plan, a retainer that releasably retains the faucet assembly in the folded position and so on. Thus, the Polakoff et al. reference does anticipate the invention as claimed.

It is also noted that claim 17 recites the term "may be". If claim 17 would to be further prosecuted, the recitation "may be" should be changed to "is" to clearly define the structure of the faucet assembly that is pivoted between an upright position and a folded position.

NEW GROUND(S) OF REJECTION

(11) Grounds of Rejection

The following new ground(s) of rejection are applicable to the appealed claims:

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/652,111. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the copending claim 1 of Application No. 10/652,111 and the instant claim 1 are minor and obvious from each other. The instant claim 1 is a broader version of the copending claim 1 (i.e. the instant claim 1 does not include the structural element of the sink housing as in the copending claim 1). In the instant claim 1, the claimed limitations can be found in the copending claim 1. Any infringement over the copending claim 1 would also infringe over the instant claim. Hence, the instant claim does not differ from the scope of the copending claim 1. In 214 USPQ 761, *In re Van Ornum and Stang*, broad claims in an application were held to be obvious double patenting over previous narrow claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In conclusion, consideration of the factual evidence supporting a determination of non-patentable subject matter as discussed above renders appellant's arguments unpersuasive.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (11) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

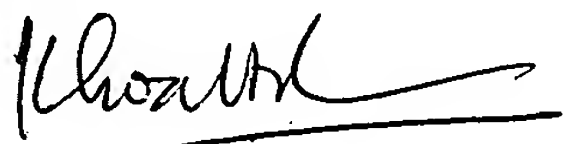
(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

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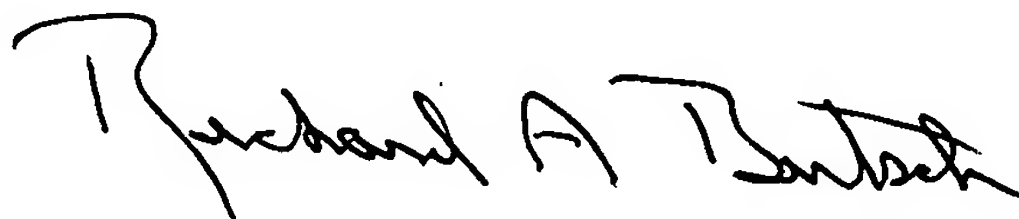
treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,



Khoa D. Huynh
Primary Examiner



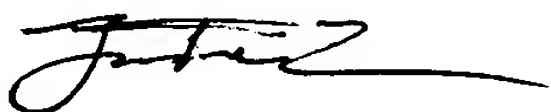
DIRECTOR

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (11) above by signing below:

Conferees:

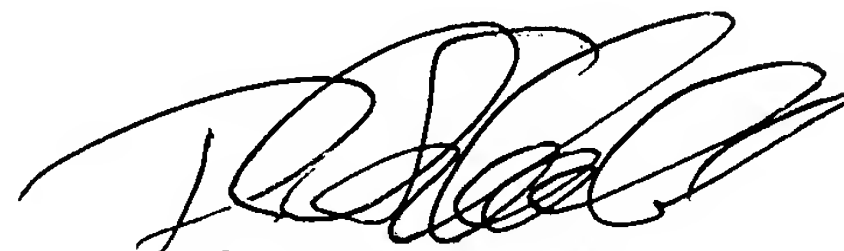
Justine Yu

Dave Scherbel



JUSTINE R. YU
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10/28/05



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